APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DATED MAY 2, 2007

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 05-2711

FRANCISCO LONDONO GUTIERREZ,

Petitioner,

v.

ALBERTO R. GONZÁLES,
ATTORNEY GENERAL,

Respondent.

Before
Torruella, *Circuit Judge*,
Stahl, *Senior Circuit Judge*,
and Howard, *Circuit Judge*.

JUDGMENT

Entered: May 2, 2007

Petitioner Francisco Londono Gutierrez seeks review of the Board of Immigration Appeal's (BIA) final order of removal of October 12, 2005. We *grant* petitioner's recently filed motion for leave to supplement

his brief, After thoroughly reviewing the parties' briefs and record before the court, we conclude that petitioner has not established a colorable due process claim and, therefore, we lack jurisdiction to review his challenge to the ruling that his asylum application was untimely. *See Ishak v. Gonzales*, 422 F.3d 22, 31 (1st Cir. 2005); *Ravindran v. INS*, 976 F.2d 754, 762 (1st Cir. 1992). We further find substantial evidence in the record supporting the determination that petitioner failed to meet his burden to show entitlement to withholding of removal. *Sharari v. Gonzales*, 407 F.3d 467, 473-74 (1st Cir. 2005).

Accordingly, the petition for review is *denied.*

By the Court:
Richard Cushing Donovan, Clerk.

By: s/ [illegible]
Chief Deputy Clerk.

APPENDIX B — ORDER OF THE UNITED STATES DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW DATED DECEMBER 12, 2005

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A79-430-081 – Boston

In re: LONDONO GUTIERREZ, FRANCISCO ANIBAL IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: DESMOND P. FITZGERALD

ORDER:

PER CURIAM. The respondent moves the Board pursuant to 8 C.F.R. § 1003.2 to reconsider our decision dated October 12, 2005. A motion to reconsider shall specify the errors of fact or law in the prior Board decision and shall be supported by pertinent authority. See 8 C.F.R. § 1003.2(b)(1). The respondent has not complied with reconsideration standards and is merely rearguing the merits of his appeal. The respondent left Colombia because of the extortionate demands of a paramilitary organization. In our last decision we agreed

that the respondent failed to demonstrate that the reported extortion was other than criminal in nature. See INS v. Elias-Zacharias, 502 U.S. 478 (1992). See Matter of T-M-B-, 21 I&N Dec. 775 (BIA 1997) (criminal extortion efforts do not constitute persecution on account of political opinion where it is reasonable to conclude that those who threatened or harmed respondent were not motivated by political opinion), rev'd, Borja v. INS, 175 F.3d 732 (9th Cir. 1999); Matter of V-T-S-, 21 I&N Dec. 792 (BIA 1997) (not persecution where perpetrators were motivated by victim's wealth). Accordingly, the motion is denied.

s/ Roger Paul
FOR THE BOARD

APPENDIX C — ORDER OF THE U.S. DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW DATED OCTOBER 12, 2005

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A79-430-081 – Boston

In re: FRANCISCO ANIBAL LONDONO GUTIERREZ
a.k.a. Jaime Gonzalez

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Carlos Magaletta, Esquire

CHARGE:

Notice: Sec. 212(a)(6)(C)(i), I&N Act
[8 U.S.C. § 1182(a)(6)(C)(i)] –
Fraud or willful misrepresentation of material fact

Sec. 212(a)(7)(A)(i)(I), I&N Act
[8 U.S.C. § 1182(a)(7)(A)(i)(I)
Immigrant – no valid immigrant visa or entry document

Appendix C

APPLICATION: Asylum; withholding of removal; Convention Against Torture

ORDER:

PER CURIAM. The respondent appeals from the January 11, 2005, decision of the Immigration Judge insofar as it denied his application for withholding of removal. The respondent has not challenged the Immigration Judge's rulings that his application for asylum was not timely filed and that he failed to demonstrate eligibility for protection under the Convention Against Torture. We adopt and affirm the Immigration Judge's decision regarding the respondent's application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), referred to by the respondent under the prior law of section 243(h) of the Act. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision"). In reaching this conclusion, we agree that the respondent has failed to demonstrate that the reported extortion was other than criminal in nature. Consequently, he has failed to carry his burden of proof with respect to establishing that it would be more likely than not that he would be persecuted on account of a protected ground or tortured upon return to Colombia.

Appendix C

Accordingly, in view of the above, the appeal is dismissed.

s/ [illegible]
FOR THE BOARD

APPENDIX D — ORAL DECISION OF THE U.S. DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, IMMIGRATION COURT, BOSTON, MASSACHUSETTS DATED JANUARY 11, 2005

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
IMMIGRATION COURT
Boston, Massachusetts

January 11, 2005

File A 79 430 081

In the Matter of

FRANCISCO ANIBAL LONDONO GUTIERREZ,

Respondent

IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(C)(i) of the Immigration and Nationality Act – fraud. Section 212(a)(7)(A)(ii) of the Immigration and Nationality Act – not in possession of a valid travel document.

APPLICATIONS: Asylum, withholding of removal, withholding of removal under the Convention Against Torture.

Appendix D

ORAL DECISION OF THE IMMIGRATION JUDGE

Introduction

The respondent is a 33-year-old native and citizen of Columbia. The Government has charged the respondent in a Notice to Appear as referenced above. Respondent, through counsel, admitted the allegations and conceded the charge of removability. Accordingly, the Court finds by clear, convincing and unequivocal evidence that the respondent is removable and directs the country of Columbia as the country of removal. The respondent has applied for relief in the form of asylum under Section 208 of the Immigration and Nationality Act. Applications for asylum shall also be considered applications for withholding under Section 241(b)(3) of the Act. The Court also considers the respondent's application for withholding or removal under the Convention Against Torture.

Statement of the Law

The burden of proof is upon the respondent to show that he is eligible for asylum or withholding of removal. There is a one year deadline pursuant to Section 208 of the Act for the filing of an application for asylum absent a showing of extraordinary circumstances or changed country conditions. To qualify for asylum under Section 208 of the Act the respondent must show that he's a refugee within the meaning of Section 101(a)(42)(A) of the Act. The definition of refugee includes the requirement that the respondent show that he has

suffered either past persecution or that he has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group or political opinion. In analyzing the respondent asylum claim the Court will follow the regulations found in 8 C.F.R. Section 208.13(b). An asylum application shall be deemed to constitute at the same time an application for withholding of removal. The burden of proof upon an alien to qualify for a grant of withholding of removal is higher than that for asylum in that the alien must demonstrate a clear probability of persecution in the country designated for deportation on account of one of the protected grounds of the Immigration and Nationality Act whereas for asylum the alien need only show that a reasonable person in their circumstance would fear persecution. The clear probability standard makes it incumbent upon the alien to demonstrate that it is more likely than not that they would be subject to persecution if returned to the country from which they seek withholding of deportation.

Facts

The respondent testified at the merits hearing with regard to this matter and also submitted a detailed written statement in support of his application for asylum and withholding of removal. He states that he was born, raised and educated in the country of Columbia. Upon graduation from high school in the year 1992 he worked for a time in the field of sports promotion in his home town. The respondent states that in either 1996 or 1997 he traveled to the United States hoping to make a better

life for himself. After a couple of years the respondent returned home to Columbia and became self-employed operating a cart from which he sold food items and also household supplies. The respondent states that at some point he was approached by members of the AUC, a paramilitary group within the country of Columbia and payments of $2,000 per month were demanded from him by these individuals in order for him to continue in his business. The respondent states that he consulted with other business owners in the area and upon their advice decided to pay this amount. After while, however, the respondent states that the demands were raised from 2,000 pesos per month to a much higher amount of 200,000 pesos per month. The respondent offered his opinion that this was the equivalent of approximately 90 U.S. dollars per month, a sum which he found to be exorbitant. The respondent states that he was unable to pay this amount and thereafter these paramilitary individuals would help themselves to money from his cash receipts and also to goods from the business which they indicate to him they used in order to support their paramilitary efforts. The respondent states that after a few months of this he was forced to abandon his business and went into hiding. He states that in December of 2001, he traveled to the United States utilizing a false passport in another individual's name which he had purchased in the city of Cali, Columbia for the amount of $4,000 American. Respondent states that he fears returning to Columbia and believes that he would be killed within 10 or 15 days of his return to Columbia apparently as a result of his failure to pay the amount which had been attempted to be extorted from him.

Appendix D

Analysis and Findings

The first matter for the Court's consideration is the one year deadline for the filing of an application for asylum. The respondent arrived in the United States as stated above on or about December 27th, 2001, but did not file an application for asylum until October of 2003, approximately two years later. The respondent has offered no explanation to justify the failure to meet the one year deadline. Accordingly, the respondent's application for asylum is denied as it was not filed as required by law within one year of his arrival in the United States. Moving on to the respondent's application for withholding. The Court must first consider whether the respondent's testimony was credible. The Court finds that the respondent's testimony was not credible as it was internally inconsistent and also inconsistent as well with certain information which was contained in his written statement. For instance, the respondent indicated that he was apparently unable or unwilling to pay approximately $90 U.S. in order to continue with his business described above, however, the respondent apparently had no problem paying a vastly larger amount of $4,000 American in order to purchase a false passport in an effort to enter the United States illegally. Even if the respondent's testimony were to be found to be credible the Court finds that the respondent has not met his burden of proving that it is more likely than not that he would be tortured or persecuted if he were to return to Columbia. Even accepting his story at face value, at most the respondent has apparently paid relatively minor sums which were extorted from him by a so-called paramilitary organization. The respondent has suffered no physical

harm to this point. Further, the Court is mindful of the information contained in Exhibit 7 of the record of proceeding which indicates that the paralegal group which demanded these extortion sums from him apparently is in the process of demobilizing and laying down their arms at the present time. Accordingly, the respondent's application for withholding of removal under the provisions of the Immigration and Nationality Act is also denied. Since the respondent has failed to meet his burden of proof with regard to either asylum or withholding, the Court now considers his claim under the Convention Against Torture. There's no evidence that the respondent would be singled out for torture by the Government of Columbia if he were to return to Columbia. Accordingly, this application as well is denied.

THE ORDER

IT IS HEREBY ORDERED that the respondent's application for asylum and withholding under the provisions of the Immigration and Nationality Act are denied.

IT IS FURTHER ORDERED that the respondent's application for withholding of removal under the Convention Against Torture is denied.

IT IS FURTHER ORDERED that the respondent be removed to the country of Columbia.

s/ Paul M. Gagnon
PAUL M. GAGNON
United States Immigration Judge

APPENDIX E — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DENYING PETITION FOR REHEARING ENTERED JULY 19, 2007

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 05-2711

FRANCISCO LONDONO GUTIERREZ,

Petitioner,

v.

ALBERTO R. GONZALES,
ATTORNEY GENERAL,

Respondent.

Before

Boudin, *Chief Judge*,
Torruella, *Circuit Judge*,
Stahl, *Senior Circuit Judge*,
Lynch, Lipez and Howard, *Circuit Judges*.

ORDER OF COURT

Entered: July 19, 2007

Before the court is Petitioner Francisco Londono Gutierrez's timely filed petition for rehearing, pursuant to Fed. R. App. P. 40, and petition for rehearing en banc, pursuant to Fed. R. App. P. 35(b)(1)(A). The petition

raises no new claims, evidence, or points of law that the court did not already consider, and dismiss, in his original petition for review. Accordingly, for the reasons already articulated in our May 2, 2007 judgment, we deny petitioner's request. The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be *denied.*

By the Court:
Richard Cushing Donovan, Clerk.

By: s/ Margaret Carter
Chief Deputy Clerk.